FILED

FEB 6 1976

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-714

MYRON F. HEILIG,

Petitioner,

v.

HONORABLE CARL J. CHRISTENSEN, Chief Judge, Eighth Judicial District Court of the State of Nevada, In and for the County of Clark; ROBERT WEISS; and JACK SHULMAN,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

PETITION FOR REHEARING

WILLIAM C. CRAMER
BENTON L. BECKER
ARTHUR R. AMDUR
Cramer, Haber and Becker
475 L'Enfant Plaza, S. W.
Suite 4100
Washington, D. C. 20024

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0930

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-714

MYRON F. HEILIG,

Petitioner,

v.

HONORABLE CARL J. CHRISTENSEN, Chief Judge, Eighth Judicial District Court of the State of Nevada, In and for the County of Clark; ROBERT WEISS; and JACK SHULMAN,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF NEVADA

PETITION FOR REHEARING

The Petitioner herein respectfully moves this Court for an order (1) vacating its denial of the Petition for Writ of Certiorari, entered on January 12, 1976, and (2) granting the Petition. As grounds for this Motion, Petitioner stated the following:

(1) The Reply Brief, which contains new and crucial information may not have been considered by this court prior to its determination. On Friday, January 9, 1976, Petitioner filed a Reply Brief, which, in addition to rebutting and clarifying contentions asserted in the Petition in opposition, contained a crucial affidavit from one Jeffery Green, Esquire. This affidavit clearly established error and an obvious lack of concern for accuracy on the part of the Respondents, all of which have resulted in the wrongful taking of Petitioner's property without due process of law. Since it is not known whether this court received the Reply Brief timely and reviewed it prior to its determination to deny certiorari, or whether the brief was distributed untimely so that the court did not have the benefit of the Reply Brief and the Green affidavit therein, this Petition for Rehearing is being submitted. Certiorari was denied the following Monday morning on January 12, 1976. To the extent that the Reply Brief may not have been duly considered by this Court, Petitioner Heilig urges that there have been both intervening circumstances of substantial or controlling effect, and substantial grounds available to Petitioner, pursuant to Rule 58, all of which necessitate this Court to consider the Reply Brief and to review the Petition for Certiorari in light of the contents of that Reply Brief.

(2) *Affidavit of Jeffery G. Green, Esquire.*

On Page 14 of the Petition In Opposition, Respondents inaccurately state:

> "There was not a tender of any sum of money to the district court in connection with Heilig's attempt to amend the court's findings, nor was

there a tender at any other time during the proceedings in either the district court or the Nevada Supreme Court."

To the contrary there were tender offers made as reflected in the Reply Brief and in particular in the affidavit of Jeffery G. Green, which provides in pertinent part:

3. On March 18, 1974, at approximately 2:00 p.m., your Affiant met in the chambers of the Honorable CARL J. CHRISTENSEN, District Judge, in connection with further proceedings in WEISS v. HEILIG, et al. Also present at that meeting were STEVE MORRIS, Esq., attorney for ROBERT WEISS, ERIC ZUBEL, Esq., attorney for MYRON F. HEILIG, and CLIFFORD A. JONES, Esq., who, along with your Affiant, represented the interest of ROBERT LEE, LTD. in the capacity of *amicus curiae*. The purpose of that meeting was to attempt to resolve the issue of HEILIG'S title to the subject property prior to oral argument on HEILIG'S Motion for Rehearing on the Motion to Confirm the Arbitrator's Award previously granted by Judge CHRISTENSEN. At that meeting, your Affiant was present when CLIFFORD A. JONES, Esq. represented to Judge CHRISTENSEN that JONES, JONES, BELL, LeBARON, CLOSE, BILBRAY AND KAUFMAN would, on behalf of ROBERT LEE, LTD., pay to HEILIG the sum of $100,000.00, as and for a down payment on the property if HEILIG could present Affiant's client with clear title to said property; that a copy of the check for $100,000.00 is attached hereto, marked Exhibit "A" and, by this reference, made a part hereof. At that meeting, your Affiant also heard STEVE MORRIS, Esq. make representations to Judge

CHRISTENSEN to the effect that HEILIG had no remaining interest in the partnership property which could be the subject of the sale to ROBERT LEE, LTD. and, therefore, HEILIG should not be permitted to encumber property belonging to WEISS.

The refusal of the court and the other respondents to accept the tender offer was violative of the arbitration agreement which the trial court was merely confirming, and deprived Petitioner of his property without due process of law. The seeking of a writ of mandamus by Petitioner was appropriate and the only effective remedy to correct the injustices inflicted upon Petitioner. The denial of mandamus to require the trial judge to conform his order to the arbitration award and to accept the tender offer by the Nevada Supreme Court wrongfully propagated the injustices.

For the reasons set forth above as well as those contained in the Petition for Certiorari and the Reply Brief, Petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully submitted,

WILLIAM C. CRAMER
BENTON L. BECKER
ARTHUR R. AMDUR
Cramer, Haber & Becker
475 L'Enfant Plaza, S.W.
Suite 4100
Washington, D.C. 20024
(202) 554-1100

Attorneys for Petitioner

February 6, 1975